

Group Briefing

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Rolling the dice on the enforcement of foreign gambling debts

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Companies offering online gaming facilities may be surprised to learn that it is not possible to recover cross-border gambling debts in Ireland. The Irish High Court recently held that a sports spread-betting company could not enforce an English judgment for gambling debts against an Irish resident in Ireland, as to do so would be contrary to Irish public policy.

SPORTING INDEX LIMITED V O'SHEA

Mr O'Shea, an Irish resident, opened an account with Sporting Index Ltd, an online gaming operator specialising in sports spread-betting. He incurred debts of €118,058.99 after placing an unsuccessful bet on the outcome of a Heineken Cup match. Sporting Index took proceedings against Mr O'Shea in England to recover the debt.

Sporting Index obtained a judgment in England of €118,058.99 in relation to the debt, and a separate judgment of £17,500 to cover its legal costs. It then applied to the Master of the Irish High Court to have the debts enforced against Mr O'Shea in Ireland. The Master ordered that both judgments of the English court were enforceable in Ireland. Mr O'Shea appealed this finding to the High Court.

ENFORCEABILITY OF GAMBLING DEBTS

The Brussels Regulation (now the Recast Brussels Regulation) allows for the mutual recognition of judgments between EU member states. This means that a valid judgment handed down in one EU member state will be automatically recognised in all others, subject to limited exceptions. One such exception is that a member state can refuse to recognise an EU court judgment if to do so would be manifestly contrary to the public policy of that state. This is the exception which Mr O'Shea sought to rely on in the High Court.

Mr O'Shea argued that the enforcement of the English judgments in Ireland would be contrary to section 36(2) of the Irish Gaming and Lotteries Act 1956, which prohibits the enforcement of "*gaming or wagering*" contracts. He argued that this section reflects a clear public policy against the enforcement of gambling contracts in Ireland, and that recognition of the English judgments would be manifestly contrary to this public policy.

The High Court agreed in part with Mr O'Shea. It held that enforcing the gambling debt in Ireland would contradict the public policy of the Gaming and Lotteries Act. The English judgment for €118,058.99 was therefore not enforceable in Ireland.

The judgment for £17,500 was, however, enforceable. It related solely to the costs of litigation in England, and so did not fall within the prohibition in the Gaming and Lotteries Act.

WHAT DOES THIS MEAN FOR THE GAMING SECTOR?

In some ways, this judgment means very little for Irish operators, as it merely reiterates the status quo as set down in the Gaming and Lotteries Act 1956. It is, however, a timely reminder for overseas betting operators that gambling contracts cannot be enforced in Ireland. This may be particularly significant for operators targeting the Irish market through the new remote betting regime put in place by the Betting (Amendment) Act 2015.

While a betting operator cannot sue on foot of a gambling debt, equally a punter cannot sue a betting operator who refuses to pay out on a debt. However, betting operators who refuse to pay out may have difficulty in obtaining or renewing a remote betting licence to provide online betting services. The licencing process requires the operator to be certified by the Minister for Justice as a “fit and proper person” to hold such a licence. One factor the Minister can take into account when considering fitness is whether the operator “unreasonably refuses or refused to pay sums due to persons who won bets made with [it]”. So although a bet made with a betting operator is essentially unenforceable under Irish law, a refusal to pay out could mean that the operator may not be able to renew its remote betting licence.

ARE THERE ANY PLANS TO CHANGE THE RULES?

Reform of the gambling sector in Ireland is on the Government’s agenda. It has published draft legislation – the Heads of the Gambling Control Bill 2013 – which proposes the introduction of a gambling regulator to regulate the sector. Online

operators which make services available in Ireland will be required to register with this regulator.

As currently drafted, the Heads of the Gambling Control Bill propose repealing the 1956 Act and making gambling contracts enforceable in most circumstances. However, unless and until this proposal becomes law, the legal position on the enforcement of gambling debts remains as stated by the High Court in *Sporting Index Ltd v O’Shea*.

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